

Legislative and administrative history of Trinity River Restoration Programs and Fishery Restoration Goals (working draft)

By Tom Stokely, TAMWG Vice Chairman

The federal law that authorized construction and operation of the Trinity River Division of the Central Valley Project (Trinity River Act of 1955, PL 84-386)¹ contained an unusual clause at the time which "directed and authorized" the Secretary of Interior to "preserve and propagate" the fish and wildlife resources of the Trinity River.

"Provided, That the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife..."

In the early 1970's the unofficial Trinity River Task Force was formed by state, local, federal and tribal entities to work on solutions to halt the rapid decline of salmon and steelhead in the Trinity River.

A letter was sent by California Department of Fish and Game Director Charlie Fullerton in 1979 to VHN Consulting that established the basis for the eventual Trinity River Restoration Program adult escapement goals:²

"The salmon escapement goals, exclusive of fishery catch, are as follows:

Adult king salmon, fall-run - 71,000 to the Trinity System, including 9,000 at Trinity River Hatchery.

Adult king salmon, spring-run - 9,000 to the Trinity System, including 3,000 at Trinity River Hatchery.

Adult silver salmon, 3,500 to the Trinity System, including 2,100 at Trinity River Hatchery.

The steelhead run size goal for the system is 50,000 adults. Of these, the escapement goal at Trinity Hatchery is 10,000 adults. The escapement goal for natural spawners in the system outside of the hatchery is undefined, and will

¹ See http://www.c-win.org/webfm_send/476

² See http://www.c-win.org/webfm_send/473

vary with the angler catch that is achieved on the initial run of 50,000 adult steelhead."

The Trinity River Restoration Program prepared two reports that adopted the goals as defined by Fullerton's 1979 letter:

1. Frederikson, Kamine and Associates. 1980. Proposed Trinity River Basin Fish and Wildlife Management Program. Prepared for USDOI Water and Power Resources Service. Contract # 8-07-02-V0035.³
2. USFWS. 1983. Trinity River Basin Fish and Wildlife Management Program. Final Environmental Impact Statement (FEIS).⁴

Following completion of the 1983 FEIS that included federal adoption of the 1979 goals for the proposed Trinity River Restoration Program, Congress passed the Trinity River Basin Fish and Wildlife Restoration Act of 1984 (PL 98-541)⁵ that was signed into law by President Ronald Reagan.

The 1984 Act clarified the language from the 1955 Trinity River Act (preserve and propagate" to mean "*...to restore the fish and wildlife populations in the Trinity River basin to a level approximating that existed immediately before the construction of the Trinity River division.*" The 1979 fishery restoration goals were essentially embodied in this Act of Congress, although specific numbers are not provided in legislation itself (Note: Check House and Senate Committee Reports)

The Central Valley Project Improvement Act, Section 3406(b) (23) PL 102-575⁶ (CVPIA) specifically directed that fishery restoration goals of PL 98-541 were to be fulfilled as follows (emphasis added):

CVPIA Section 3406(b)
"(23) in order to meet Federal trust responsibilities to protect the fishery resources of the

³ See <http://odp.trrp.net/Data/Documents/Details.aspx?document=1749>

⁴ See <http://odp.trrp.net/Data/Documents/Details.aspx?document=1944>

⁵ See http://www.c-win.org/webfm_send/475

⁶ See http://www.usbr.gov/mp/cvpia/title_34/index.html

Hoopa Valley Tribe, and to meet the fishery restoration goals of the Act of October 24, 1984, Pub. L. 98-541, provide through the Trinity River Division, for water years 1992 through 1996, an instream release of water to the Trinity River of not less than 340,000 acre-feet per year for the purposes of fishery restoration, propagation, and maintenance and,

(A) by September 30, 1996, the Secretary, after consultation with the Hoopa Valley Tribe, shall complete the Trinity River Flow Evaluation Study currently being conducted by the U.S. Fish and Wildlife Service under the mandate of the Secretarial Decision of January 14, 1981, in a manner which insures the development of recommendations, based on the best available scientific data, regarding permanent instream fishery flow requirements and Trinity River Division operating criteria and procedures for the restoration and maintenance of the Trinity River fishery; and

(B) not later than December 31, 1996, the Secretary shall forward the recommendations of the Trinity River Flow Evaluation Study, referred to in subparagraph (A) of this paragraph, to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives. If the Secretary and the Hoopa Valley Tribe concur in these recommendations, any increase to the minimum Trinity River instream fishery releases established under this paragraph and the operating criteria and procedures referred to in subparagraph (A) shall be implemented accordingly. If the Hoopa Valley Tribe and the Secretary do not concur, the minimum Trinity River instream fishery releases established under this paragraph shall remain in effect unless increased by an Act of Congress, appropriate judicial decree, or agreement between the Secretary and the Hoopa Valley Tribe. Costs associated with implementation of this paragraph shall be reimbursable as operation and maintenance expenditures pursuant to existing law."

CVPIA also acknowledged the difference between the Trinity River and Central Valley streams by having separate fishery restoration goals for each basin. Thus, the Trinity River is not subject to the Central Valley "fish doubling" provision of CVPIA nor state law.

In 1996, Congress passed Public Law 104-143, the Trinity River Basin Fish and Wildlife Management Reauthorization Act of 1995.⁷ In addition to reauthorizing the Trinity River

⁷ See http://www.c-win.org/webfm_send/474

Restoration Program for another three years and other measures, it clarified the goals of the Trinity River Restoration Program in order to ensure that adult salmon and steelhead escapement were not met by simply reducing user group fishing quotas. It ensured that the program's goal was to increase harvest for depleted tribal, commercial and sport fisheries.

"(5) Trinity Basin fisheries restoration is to be measured not only by returning adult anadromous fish spawners, but by the ability of dependent tribal, commercial, and sport fisheries to participate fully, through enhanced in-river and ocean harvest opportunities, in the benefits of restoration;"

"(7) the Secretary requires additional authority to implement a management program, in conjunction with other appropriate agencies, to achieve the long-term goals of restoring fish and wildlife populations in the Trinity River Basin, and, to the extent these restored populations will contribute to ocean populations of adult salmon, steelhead, and other anadromous fish, such management program will aid in the resumption of commercial, including ocean harvest, and recreational fishing activities."

PL 104-143 also made clear a distinction that hatchery production goals were to compensate for lost fish habitat upstream of Lewiston Dam:

(c) TRINITY RIVER FISH HATCHERY. —Paragraph (1)(C) of such section (98 Stat. 2722) is amended by inserting before the period the following: ", so that it can best serve its purpose of mitigation of fish habitat loss above Lewiston Dam while not impairing efforts to restore and maintain naturally reproducing anadromous fish stocks within the basin".

The December 19, 2000 Trinity River Record of Decision by the Interior Secretary and Chairman of the Hoopa Valley Tribe incorporated the fishery restoration goals of the 1984 Act, PL 98-541, as directed by Congress in the Central Valley Project Improvement Act.

The four lead agencies for preparation of the EIS/EIR for the 2000 Trinity ROD (TC, HVT, USFWS, USBR) discussed the issue of revisiting the program goals and decided against doing so.

What Constitutes "Completion"?

According to CVPIA Section 3407, CVP beneficiaries (Power, Ag, M&I) will be able to reduce their payments to the CVPIA Restoration Fund, when the restoration items in Section 3406 have been completed. That includes Trinity, but also many other projects throughout the Central Valley.

I believe that Trinity River Restoration will be complete when the fishery restoration goals of PL 98-541, as amended by PL 104-143 have been met.